IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 34480 of 2007(D)

AGAINST THE ORDER IN IA.1447,1448,1518&1516/07 IN OS.337/2007 of MUSNIFF COURT,ADOOR

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PETITIONER:

RAJESH KUMAR, S/O.P.C.NATESAN,
VEMPALIL VEEDU, KRISHNAPURAM MURI,
KRISHNAPURAM VILLAGE, KARTHIKAPPILLY TALUK,
ALAPPUZHA DISTRICT.

BY ADV. SRI.JACOB P.ALEX

RESPONDENT:

VARUN RAJ, RAJAVILASOM HOUSE,
KAIPPUZHA MURI, KULANADA VILLAGE,
KOZHENCHERRY TALUK, REP. BY POWER OF ATTORNEY
HOLDER, N.R.PRASANNA CHANDRAN PILLAI,
KOUSTHUBHAM, PANANGADU P.O., KAIPPUZHA MURI,
KULANADA, KOZHENCHERRY.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34480 of 2007

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Dated this the 22nd day of November, 2007.

JUDGMENT

This Writ Petition is filed seeking a direction to the Munsiff, Adoor to consider and pass orders on Exts.P10 and P11 objections and P12 and P13 while passing orders on Ext.P8. The suit is one for declaration of title and for injunction and along with the plaint an application,I.A.No.1447 of 2007 was moved by the plaintiff for a temporary injunction to restrain the defendant from trespassing upon plaint item No.2 and annexing the same to plaint item No.4, etc. Thereafter the plaintiff approached this Court by W.P.(C)No.33939 of 2007 with the grievance that no order is passed in the interim application. Therefore, this Court directed the court below to dispose of I.A.No.1447 of 2007 as expeditiously as possible and if possible on 20.11.2007 itself or within one or two days thereafter for disposing of the case.

2. Meanwhile now the present Writ Petition is filed wherein it is submitted that the defendant in the suit has filed a counter statement to the injunction application in I.A.No.1447 of 2007 and has filed objection to the Commissioner's report as I.A.No.1448 of 2007 and he has filed an application as I.A.No.1518 of 2007 for setting aside the Commissioner's report and mahazar and also another application wherein he has applied

for the issuance of a separate Commission with the help of Taluk Surveyor. So far as the objection to the Commissioner's report and the counter statement to the injunction application are concerned, when a court is hearing an injunction application on merits, the court is duty bound to consider those objections before passing final orders. So far as the other two applications, namely, Exts.P12 and P13 are concerned, unless the court decides set aside the Commissioner's plan and report under Ext.P12, the court may not be in a position for issuance of a fresh Commission as prayed for in Ext.P13. So while considering an application for temporary injunction, the court has to consider the materials supplied by both sides. If the court is prima facie satisfied that the Commissioner's report submitted is not acceptable from the materials pointed out by both the parties, then necessarily the court may not be in a position to rely upon that. Therefore in such eventuality the court may have to consider the application for setting aside the Commissioner's plan and report as well as for the issuance of Commission.

3. This is the matter which is absolutely within the province of the court which is hearing the matter and therefore if the court is in a position to dispose of the injunction application with the materials available before the court then it is for that court to decide the same and if it is not possible for the court to do the same in the light of the fact that the Commissioner's plan and report are not acceptable for a proper disposal, then the court may consider those applications before passing orders. But at

the same time, the court is bound to pass some interim orders or in the form of an arrangement, so that till the disposal of the interim applications on merits, the parties will be governed by the order passed by the court on application of its mind. In the light of my this direction, I direct the court below that if the time is required further, it may apply for extension of time.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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